

The Highland Council

Transport, Environmental and Community Services Committee 16 May 2013

Agenda Item	11
Report No	TEC 44-13

Consultations on the New Food Body for Scotland

Report by Director of Transport, Environmental and Community Services

Summary

This report invites Members to approve the Council's response to the Scottish Government's consultation on "A Healthier Scotland: Consultation on Creating a New Food Body", and the Food Standards Agency consultation on "New Proposed Enabling Primary Food & Feed Legislation Provisions".

1. Introduction

- 1.1 The current horsemeat scandal has highlighted the importance of having a single independent public body with clear responsibility for all aspects of food safety and standards. As previously noted at Committee, the Scottish Government wish to establish a new Food Body for Scotland which will have responsibility for food safety and standards, feed safety and standards, and meat inspection policy and operational delivery. These devolved functions are currently carried out in Scotland by the UK-wide Food Standards Agency (FSA).
- 1.2 The Scottish Government views the creation of the new body as a crucial step in assisting with its commitment to ensuring people in Scotland live longer, healthier lives. Poor diet is a major cause of ill health in Scotland and around 130,000 consumers contract food borne disease each year, with around 2,000 hospitalised and around 50 deaths. The cost to the Scottish economy of food-borne disease is estimated at £140 million.

2. Scottish Government Consultation

- 2.1 The Scottish Government consultation has been issued ahead of primary legislation being drafted. This consultation on the role of the new food body is an opportunity to provide comments on what the new food body should do, and how food safety and standards should be addressed in Scotland in the future. Responses are invited by no later than 22 May 2013.
- 2.2 The Council's proposed response is provided in **Appendix A**. In summary, the response is very supportive of the new body being established

3. Food Standards Agency Consultation

- 3.1 In parallel to the Scottish Government's consultation on the scope of the new food body in Scotland, the FSA has issued a 12-week consultation proposing the establishment of three new legal powers for possible inclusion in the New Food

Body Bill.

3.2 The three areas the FSA is consulting on are:

1. New legislation powers to enable Scottish Ministers to make, if agreed in the future, any food business operator display the outcome of an official food inspection. This is different from the voluntary Food Hygiene Information Scheme currently being rolled out by the Council;
2. New legislative powers to enable Scottish Ministers to create, if required, new enforcement sanctions such fixed penalty notices;
3. New legislative powers to enable the detention of any food, where it does not meet the requirements of food law in relation to food standards or labelling, similar to those which already exist for foods not complying with food safety legislation.

3.3 The Council's proposed response is provided in **Appendix B**. In summary, the response is very supportive of the new body being established

4. Implications

4.1 At this initial stage there are no resource implications. If the new Food Body does take on current Local Authority responsibilities there may be significant resource implications for Environmental Health. The level of impact will vary according to the specific changes.

4.2 There are no legal implications arising from this report.

4.3 There are no equality implications arising from this report.

4.4 There are no Climate Change implications arising from this report.

4.5 There are no risk implications arising from this report.

5. Recommendations

5.1 Members are invited to approve the Council's response to the Scottish Government consultation on creating a new Food Safety Body for Scotland, as contained in **Appendix A**.

5.2 Members are invited to approve the Council's response to the Food Standards Agency consultation on New Proposed Enabling Primary Food and Feed Legislation Provisions, as contained in **Appendix B**.

Designation: Director of Transport, Environmental and Community Services

Date: 3 May 2013

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Background Papers:

Scottish Government 'A Healthier Scotland: Consultation on Creating a New Food Body', <http://www.scotland.gov.uk/Publications/2013/02/2691>

Food Standards Agency 'Consultation on New Proposed Enabling Primary Food & Feed Legislation Provisions', <http://www.food.gov.uk/news-updates/consultations/consultations-scotland/2013/foodandfeed-consult-scot#.UYF3GxBwaUk>

Scottish Government “A Healthier Scotland: Consultation on Creating a New Food Body”

CONSULTATION QUESTIONS

The Highland Council - proposed response

1: Should the scope of the new food body extend beyond the current scope of the FSA in Scotland? If yes, what specific extensions of scope would you suggest, and why?

Comments:

The Highland Council would support extending the scope of the new food body beyond the current scope of the current FSA if in doing so the New Food Body would provide improved strategic leadership and better co-ordination of multi-agency service delivery. In respect of the areas mentioned in paragraph 20 of the consultation we comment as follows:

Alcohol – The Highland Council supports a multi-agency approach to dealing with health and societal problems associated with alcohol consumption. The new Food Body would have an important part to play in national strategies to tackle these problems, but the Highland Council believes the lead should come from health professionals/NHS in this area.

Obesity – The Highland Council would support the new food body being actively involved in this area. The new Food Body, working with other partners, would be well placed to deliver improvements in obesity levels in Scotland. The new food body would be in a position to influence the food industry on food composition and portion size, influence local authorities on the outcomes of food standards inspection and sampling programmes, build service delivery partnerships with NHS colleagues and where appropriate highlight to the Scottish Government the need for legislation.

Food poverty – The Highland Council believes this is another legitimate area for the new Food Body to be involved in. Again, the new Food Body would be working with partners to track and measure food poverty and would be ideally positioned to initiate projects or programmes to tackle food poverty.

Food advertising – enforcement of regulation in respect of health claims and advertising currently sits with local authorities and the Highland Council would recommend that this position is maintained to avoid any issues around dual enforcement in respect of food labelling and presentation. The Highland Council would support the new Food Body being actively involved in promotional activities to improve consumer awareness and to assist consumers in making healthier food choices.

Provenance – The Highland Council recognises that provenance is an important food labelling issue and has significant benefits for the Highland and wider Scottish food industry. The Highland Council would support the new Food Body being

involved in this area and feels it sits well with the food standards remit and helping to support the Scottish economy.

Food Security – The Highland Council would support the new Food Body being involved in this area. The new Food Body should establish links with emergency and contingency planning organisations. The new Food Body will want to be satisfied that for food there is a security of supply and the supply chain is protected from terrorism.

2: Should the new food body and the Scottish Government continue the arrangements for independent and partnership work on diet and nutrition set out in Annex A? If not, what changes would you suggest, and why?

Comments:

The Highland Council agrees the arrangements in annex A should continue. The Highland Council support the new Food Body working with NHS Scotland and Local Authorities to link into community planning partnerships and Community Health Partnerships. The Highland Council also agrees that in establishing new food body clarity should be given on lead for diet and nutrition. The Highland Council suggests the improved clarity of roles and responsibilities will ensure better co-ordination and benefit everyone.

The Highland Council also support the proposed interface with the education system and feels this is the correct age group to work with to bring about societal change.

The Highland Council also support the new Food Body taking the lead in the areas outlined in paragraphs 34 (science and evidence based, consumer focused public nutrition policy) and 35 (policies such as the Healthy Living Award for caterers).

3: Are there any additional roles, responsibilities or functions in respect of diet and nutrition that you think the new food body could take on to help deliver an improvement to the health of the people in Scotland? Please give details and reasons.

Comments – The Highland Council feels the areas suggested in the consultation document are the appropriate functions for the new Food Body.

4: What steps do you think could be taken to ensure the new food body is able to access the best available independent expert advice it needs to underpin its work on food safety and public health nutrition in Scotland? Please give reasons.

Comments: The Highland Council recommends that the new Food Body links into existing scientific committees etc. in the UK. This will avoid duplication of effort and recognises the integrated nature of the foods supply chain in the UK. The Highland Council suggests the new Food Body also establish links with international organisations, this is important due to the global nature of the food industry; as it is important that the new food body is aware of developments at an international level.

5: Do you consider that the new food body should focus its research and surveillance activities on issues that are particularly pertinent to Scottish citizens or should it also contribute to science and evidence programmes on wider issues which have relevance to the UK as a whole? Please give reasons.

Comments: The Highland Council recommends that the new Food Body should deal with both areas as food businesses link into the UK food supply chains and this is a significant part of the Scottish economy.

6: Do you agree that the new food body should be responsible for the coordination of all Scottish Government funded research on food safety and public health nutrition?

What steps could be taken to raise the profile of the new food body as a research funder across the UK and beyond? Please give reasons.

Comments:

The Highland Council supports the new Food Body being responsible for food safety research, but would suggest the new Food Body works in partnership with the NHS on public health nutrition research.

In respect of the profile as a research funder, the Highland Council would recommend using existing links to academic institutions and international network for overseas research.

7: Do you have any further suggestions for how the new food body could establish a strong independent evidence base for food safety, food standards and nutrition policy? Please give reasons.

Comments:

Further to the responses to questions 4, 5 and 6, the Highland Council would recommend that the new Food Body works with SFELC and local authorities through the Food Liaison Group network to design statistically valid surveys and sampling programmes to provide evidence to inform policy making.

8: Do you consider that the new food body would require any further statutory powers, in addition to those that the FSA already has, to equip it to deal effectively with incidents such as the recent horse meat substitutions, and to prevent such incidents happening? Please give reasons.

Comments – The Highland Council would support additional enabling powers being available to the new Food Body and we are supporting the proposed changes in the FSA consultation which is running concurrently with this consultation. The Highland Council would recommend that the new Food Body considers the Audit Scotland report 'Protecting Consumers' and in particular, how it can contribute and assist in considering the wider issues around work force planning.

9: Do you have any further comments about how the new food body might ensure that it can deal effectively with contraventions of food standards and safety law?

Please give reasons.

Comments:

The Highland Council believes there is a lack of options available to deal with food standards contraventions. We would suggest the new Food Body consider introducing a range of notices that would fill the gap between informal action and reporting contraventions to the Procurator Fiscal. For example, the wider application of fixed penalty notices for food safety and food standards contraventions could provide a very useful alternative to prosecution that would be flexible and proportionate. This would meet the recommendations of the Macrory report (Regulatory Justice: Making Sanctions Effective, 2006). Introduction of the powers to Local Authorities would not be a significant issue as similar powers are regularly used by Environmental Health teams for other legislation and are also available under other current food legislation (e.g. the Scotch Whisky Regulations 2009, SI2009:2890).

10: Should the new food body take on any roles and responsibilities not currently fulfilled by the FSA in Scotland? If yes, please give details and reasons.

Comments:

The Highland Council agrees that the establishment of the new Food Body provides an opportunity to take stock of the roles and responsibilities of all organisations involved in food and feed official controls and related areas.

The Highland Council considers it vital that the current holistic nature of environmental health services should not be jeopardised through any consequent reorganisation of delivery of Food Controls. In particular, changes that would result in the transfer of staff from local authority services to a centralised delivery body are likely to have a detrimental effect on the viability of environmental health services. The Highland Council supports official control delivery remaining with local authorities as the food safety service is an integral aspect of the environmental health function and staff involved in the food safety service may be responsible for delivering a range of functions at food businesses.

Apart from some limited and specific examples given in question 11 we strongly support the existing successful partnership approach in Scotland progressing forward with local authorities retaining their current responsibilities. We believe that in Scotland local authorities are providing an efficient and effective service that is capable of responding to challenges. This was widely recognised during the critical stages of the horsemeat scandal but has also been demonstrated in the continuing improvement been brought about since the FSA was formed. There is always room for improvement and the current structure in Scotland of liaison groups, SFELC, and FSA audits provides a solid foundation for the new Food Body to continue improvement by working with local authorities. The recent 'Protecting Consumers' report by Audit Scotland recognised the good work in this area in providing consistency and the new Food Body should seek to enhance these existing partnerships and not introduce significant changes to the current responsibilities shared between the FSA and local authorities.

In response to the specific suggestions:

- animal by-products – we agree that the new Food Body should take on responsibility for co-ordination of this activity to ensure it is getting appropriate priority. Local authorities should retain current enforcement role;
- all areas of food labelling, provenance – for consistency we agree that the new Food Body should take on responsibility for coordination of this activity. Local authorities should retain current enforcement role;
- Dairy and egg production controls - we agree that the new Food Body should take on responsibility for co-ordination of this activity to ensure it is getting appropriate priority. Local authorities should retain current enforcement role;
- public analyst functions – it is key that the new Food Body have significant involvement with the on-going work on the Scientific Services review. The long term responsibility for the proposed Scottish Scientific Service should be considered as part of that review.

11: Please tell us your views about these suggestions for changes to the delivery of official food and feed controls. Do you think that the new food body should work in a different way with local authorities? Please give reasons.

Comments:

As stated, the Highland Council believes the existing partnership between local authorities and FSA works well and this successful partnership approach in Scotland is the building block for new body.

In respect of the bullet points in paragraph 48 we comments as follows:

Approval of food and feed establishments – The Highland Council **strongly disagrees** with the consultation proposal for the new Food Body to take on responsibility for approval of establishments requiring approval, and all processes for the suspension or withdrawal of those approvals. Local authorities are best placed to work closely with local businesses to assist them in all stages of the approval process. This includes the sometimes extensive pre-approval work and the on-going modifications to processes and product ranges. Local industry need a prompt service to deal with these demands and this is currently provided by local authorities. We struggle to see how a remote, centralised body could provide a similar level of service as that currently available to businesses in the Highlands.

The duplication involved in the proposal in having two sets of officers trained, one to deal with approval and one to deal with on-going enforcement and liaison, also must be questioned. We believe an area that could be improved is the network of officers with specialism in particular processes. Currently this has developed informally or to deal with particular new developments. We believe the new Food Body could have a key role in developing a stronger network of enforcement experts through the current food liaison groups. This improved network would have significant benefits both to the new Food Body and local authorities.

Food standards and FSA operations – The Highland Council notes that food standards could be delivered by the new Food Body where they also deliver food hygiene official controls. However, steps must be taken to ensure consistent qualification, training and experience requirements are maintained for all staff

undertaking Food Standards Controls. With this consideration, the Highland Council recommends the role is retained by Local Authorities, unless there is clear evidence that the service could be provided more efficiently and effectively by the new Food Body.

Coordination of export certification – The Highland Council **strongly agrees** with this proposal in respect of the **co-ordination** of certification requirements. This is a key area of the Scottish economy that needs a co-ordinated Scottish approach to the delivery of the activity. The significant issues raised by industry and Local Authorities on the DEFRA handling of the recent export certification for fish products to China demonstrates the need for greatly improved co-ordination of this activity to ensure adequate consultation with local authorities and industry at an early stage. However, we strongly recommend that the actual service delivery remains with local authorities.

Import controls at ports of entry – The Highland Council recognises the benefits this may give in respect of consistency and may provide greater efficiency. However, the current service and experience in Local Authorities in delivering the service must be considered. In addition, with the small number of establishments this affects it is important to consider the impact any change would have on the local authorities involved. Unless there are identified, insurmountable issues with Local Authority delivery of the activity we would recommend the activity be **retained by Local Authorities**.

Delivery of official controls relating to animal feed hygiene and standards – The Highland Council would recommend that any changes in this area are considered carefully, taking account of the views expressed by SCOTSS and considering whether there is scope to identify separate solutions for individual parts of the Feed supply chain e.g. on farm activities; distribution; and production, ensuring that any solution does not have a detrimental impact on the wider Trading Standards function by Local Authorities.

Delivery of all official controls and related monitoring activity during primary Production The Highland Council would recommend that any changes in this area are considered carefully and do not adversely affect the delivery of the wider environmental health function by local authorities. This may be an area where a **flexible transfer** approach to the enforcement role is adopted as for areas such as fishing there may be more suitable arrangements for providing service but for other areas such as remote game larders there is benefit in retaining local authority approach as officers may be visiting these areas for other duties such as monitoring private water supplies.

Delivery of official controls relating to the supply and manufacture of materials and articles in contact with food, food additives and processing aids – The Highland Council **agrees** with this proposal as it will provide consistency and address any gaps in the current arrangements.

Recognition of natural mineral water sources – The Highland Council **agrees** with this proposal as it will provide consistency. However, the Council recommends that flexibility is applied with arrangements for sampling to ensure appropriate use is

made of Local Authorities expertise and available local resources for sampling and monitoring of supplies.

Para 49: technical and professional training – The Highland Council agrees with this proposal and believes it would be useful. We recognise the potential to establish a similar role in relation to training for the new Food Body to that of HSE in providing specialist support to local authorities on occupational health and safety enforcement.

Para 50: Formalise SFELC through legislation – The value of SFELC lies in the broad membership, the willingness of members to commit their time to the work of the Committee and the ability to create working groups to take forward specific areas of work. The Highland Council believes the current arrangements are consistent with Schedule 2 of the Food Standards Act 1999 and that SFELC meets the requirements of a joint committee as detailed in section 8 of this schedule. The Highland Council would support legislation that is similar to the existing provisions to allow the new Food Body to establish joint committees. The Highland Council believes there is an area where more formalised recognition would be beneficial and this relates to the status of the guidance produced by SFELC. SFELC guidance is generally designed to promote consistency and it would be beneficial if it was recognised in the same way as the Code of Practice or Practice Guidance and ultimately the guidance could be incorporated into these documents. The Highland Council is aware of the Scottish Government plans for Better Regulation legislation and see a definite role for SFELC in producing national standards for food safety.

12: Do you have any views on how the new food body should assure delivery of official controls and meet the relevant EU obligations? Please give reasons. Comments

The Highland Council recommends the new Food Body prepares a Scottish Framework agreement similar to the framework agreement that currently exists. We would also recommend that the existing Food Law Code of Practice and Practice Guidance are replicated to detail the delivery of official controls. The Highland Council recognises the benefits of the current audit arrangements and would recommend the existing arrangements are retained.

The Highland Council is aware that the new Food Body will have the responsibility as the central competent body to ensure the provision of adequate resources to deliver official controls. Given the current concerns relating to work force planning the new Food Body may find benefit in establishing service level agreements with local authorities to have the assurance that official controls will be delivered adequately and consistently across Scotland.

13: Are there any additional or alternative relationships that you would suggest that would help the new food body achieve the Scottish Ministers' objective of longer, healthier lives for the people of Scotland? Please give details and reasons.

Comments: The Highland Council believes the existing partnership approach adopted by FSA has worked well and recommends the new Food Body builds on these existing arrangements.

14: Do you have any suggestions about how the new food body can engage effectively with consumers, both in developing policy and providing information and advice?

Comments: The Highland Council welcomes the consumer focus proposed for the new Food Body and would recommend engagement is via the existing networks.

15: Do you agree with the suggested approach to ensuring the new food body's independence from Government and the food industry? Do you have any further suggestions for how the new food body could best establish and maintain its position as an arms length part of Government? Please give reasons.

Comments: The Highland Council agrees with the approach to ensuring the new food body's independence from Government and the food industry. We believe this is important for the delivery of Scottish Government's aim to protect public health and maintain consumer confidence. We recommend the existing liaison arrangements are continued as these can deliver a means of communicating effectively with Government and the food industry without compromising the independence of the new Food Body.

16: Do you have any further comments, or suggestions, on the creation of a new food body for Scotland that are not covered by any of the previous questions?

Comments: No further comments.

Food Standards Agency “Consultation on New Proposed Enabling Primary Food & Feed Legislation Provisions”

CONSULTATION QUESTIONS

The Highland Council - proposed response

a) New primary legislative powers to provide a statutory basis for a scheme to enable Scottish Ministers to make, if agreed in the future, any food business operator display the outcome of an official food inspection

Q1: Do you agree that it would be useful to provide enabling powers, so that, following a further consultation, Scottish Ministers might provide regulations requiring the outcomes of official food inspections to be displayed by food business operators and requiring local authorities to participate in such schemes?

Comments: The Highland Council notes that the consultation deals with a proposal to provide suitable enabling powers and to provide a statutory basis for the scheme. A further detailed consultation would be carried out on any new legislative policy to bring in a mandatory scheme to display outcomes of official food inspections.

On that basis the Highland Council are very supportive of the new Food Body being provided with enabling powers.

We believe that a mandatory scheme would bring greater transparency and full involvement of all businesses and local authorities in these types of schemes. In our view, mandatory schemes provide further information to the public so that they can make an informed choice on where to eat but also encourage local businesses to ensure hygiene standards are maintained.

Q2: Are you aware of any similar schemes in existence in other countries where improvements in compliance with hygiene rules have been verified after their introduction? If so please provide details of the scheme.

Comments: We believe successful schemes are being run in certain American, Australian and Canadian states, and in New Zealand.

b) New primary legislative powers to enable Scottish Ministers to create, if required, new enforcement sanctions such as administrative penalties or forms of restorative justice in relation to food and feed law

Q3: Do you agree that it would be useful to provide enabling provisions in this area?

Comments:

The Highland Council supports enabling provisions to create new enforcement sanctions. This approach supports the Scottish Government justice policy to

consider the use of non-criminal proceedings where appropriate to release pressure on the criminal justice system. In addition it meets the recommendations of the Macrory report (Regulatory Justice: Making Sanctions Effective, 2006). This report suggests that a flexible, proportionate, risk-based approach which utilises a range of direct measures and other tools in addition to criminal prosecution is needed to improve compliance.

Q4: If these were to be introduced which areas of food and feed regulatory policy do you think they would be best suited to?

Comment: The wide application of fixed penalty notices and other alternative sanctions to all areas of food safety and food standards contraventions could provide a very useful alternative to prosecution that would be flexible and proportionate.

Q5: Do you have any experience of the application of similar provisions in other areas of public policy and if so have you considered them a useful tool?

Comments: Similar powers are regularly used by Environmental Health teams for other legislation such as the smoking ban, litter control and dog control. Fixed penalty notices are also available under current food legislation (e.g. the Scotch Whisky Regulations 2009, SI2009:2890).

c) New primary legislative powers to enable the detention of any food, where there are reasonable ground to suspect that it does not meet the requirements of food law in relation to food standards or labelling, similar to those which already exist for foods not complying with food safety legislation.

Q6: Do you consider that it would be useful to extend the existing powers of authorised officers to detain food, which already exists for foods not complying with food safety requirements, to areas where the food is considered safe but there are doubts over either its composition or its description or labelling?

Comments: The Highland Council believes there is a lack of options available to deal with food standards contraventions. **We support the provision of powers to seize and detain foods**, pending further investigation where there is a suspicion that the foods do not comply with food standards requirements. This would cover situations where foods do not pose a public health risk, but may be described or labelled in a misleading way, or where the foods might not comply with the compositional standards.

Q7: In addition to extending the scope of the powers to detain food to areas of food standards and labelling do you consider that there are any situations where powers should also be provided to allow for foods to be seized and destroyed for non-compliance with food standards and labelling rules, similar to those that already exists for foods not meeting food safety requirements?

Comments: Current provisions allow for seizure and destruction when food is injurious to health or unfit for human consumption. If food has been detained for food standards reasons there must be provision for a proportionate response if the food is

found not to meet food standards requirements. This may be dealt with through re-working or re-labelling but there may be exceptional circumstances where the proportionate response is to remove the food from circulation and have it destroyed. **The Highland Council supports the provision of powers to cover these exceptional circumstances.** Clear guidance on the proportionate use of these powers would be required from the new Food Body.
